

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

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|--------------------------|---|--------------------------|
| IN RE: Kalisha Brewster, | * | |
| | * | |
| Plaintiff/Debtor, | * | Chapter 13 |
| | * | Case No.: 16-50774 |
| vs. | * | |
| | * | |
| Michael Nulph, | * | Adversary Proceeding No: |
| | * | |
| Defendant/Creditor, | * | |
| | * | |
| M. Elaina Massey | * | |
| Trustee. | * | |

COMPLAINT FOR VIOLATION OF AUTOMATIC STAY

COMES NOW, Kalisha Brewster (Plaintiff), through her attorney John T. Bolden, and files this Complaint for Violation of Automatic Stay (Complaint), and shows the Court as follows:

1.

Plaintiff filed a voluntary petition pursuant to Chapter 13 of the United States Bankruptcy Code on November 3, 2016.

2.

The standing Chapter 13 Trustee in this case is Elaina Massey.

Jurisdiction

3.

This Court has jurisdiction over this matter pursuant to 11 U.S.C. §105 and Fed. R.

Bankr. P. 9020. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper under 28 U.S.C. § 1409(a).

Allegations

4.

On November 3, 2017, Plaintiff filed for Chapter 13 Bankruptcy, case 16-50774 and provided Defendant with proof of filing via the Court's Notice of Filing.

5.

Defendant is listed as an unsecured creditor with a claim of approximately \$26,000.00.

6.

On or about December 2016 through May 2017, Defendant offset his child support obligations owed to Plaintiff in the amount of \$500.00 per month to repay the debt owed to him in violation of the Automatic Stay. This debt is dischargeable pursuant to 11 U.S.C. § 1328(a).

7.

As of the date of this Complaint, no Motion for Relief has been filed in Plaintiff's Chapter 13 Bankruptcy.

Violation of Automatic Stay

8.

Defendant violated the automatic stay by offsetting his child support obligations owed to Plaintiff in the amount of \$500.00 per month.

9.

Pursuant to 11 U.S.C. § 362(k)(1), Plaintiff is entitled to actual damages, costs, attorney

fees, and punitive damages.

10.

Pursuant to 11 U.S.C. § 105, monetary sanctions would be appropriate to enforce the automatic stay.

11.

Plaintiff requests the Honorable Court order Defendant immediately return all monies withheld from his domestic support obligation payable to Plaintiff since November 3, 2016.

Punitive Damages

12.

Plaintiff requests Defendant be held in contempt for violation of 11 U.S.C. § 362. Pursuant to 11 U.S.C. §105, sanctions against Defendant would be appropriate in order to enforce the automatic stay. Plaintiff further requests this Court to award actual damages including attorney fees and costs of bringing this action.

13.

WHEREFORE, Plaintiff prays for the following relief:

- (a) That the Court rule that Defendant's actions violated the automatic stay in effect in the current Chapter 13 Case;
- (b) That this Court rule the debt is dischargeable pursuant to 11 U.S.C. § 1328(a) ;
- (c) That the Court award Plaintiff the reasonable attorney fees associated with this adversary proceeding;

- (d) That the Court award punitive damages in the amount of \$10,000 as a penalty of Defendant's willful violation of the automatic stay;
- (e) That the Court hold Defendant in contempt; and
- (f) That the Court award any further relief that it deems appropriate.

This 19th day of June, 2017.

By: s/ John T. Bolden
John T. Bolden
Attorney for Plaintiff/Debtor
Georgia Bar No. 996780

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